

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **March 25, 2003**

AGENDA ITEM NO.: 10

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Awarding of a Franchise for the Awareness Garden**

RECOMMENDATION:

Accept bids and adopt an ordinance for a franchise for the development and management of the Awareness Garden located at the Ed Page Entrance on the James River Heritage Trail.

SUMMARY:

On October 8, 2002 the Awareness Garden Foundation, Inc and the City agreed, by Memorandum of Understanding, to establish an Awareness Garden at the Ed Page Entrance on the James River Heritage Trail.

The purpose of the garden is:

“To make the public aware that cancer touches all people... children and adults alike.

To provide scholarships through future endowments for students whose lives or families have been touched by cancer.

To foster cancer awareness through educational outreach in local area schools and colleges.

To provide a tangible, special place for people to reflect on the courage, dignity and hope of those who have overcome this disease and those who have fought it.”

The Memorandum of Understanding stipulated that a Franchise would be established to provide for the long term development and management of the garden. This Franchise firmly establishes the City's commitment to granting use of the property for development of the garden. Furthermore, the Franchise establishes the Awareness Garden Foundation, Inc's commitment to fund raising and long-term maintenance of the garden.

PRIOR ACTION(S):

Work Session, September 24, 2002

Council meeting, October 8, 2002

BUDGET IMPACT:

No impact for FY 03

Utility costs for FY 04 are estimated at \$1200.00

CONTACT(S):

Kay Frazier 847-1640 ext. 128

ATTACHMENT(S): Franchise agreement

REVIEWED BY: lkp

AN ORDINANCE GRANTING A FRANCHISE TO THE AWARENESS GARDEN FOUNDATION, INCORPORATED, TO CONSTRUCT, OPERATE AND MANAGE A CANCER AWARENESS GARDEN, WHICH SHALL BE OPEN TO THE GENERAL PUBLIC ON A 0.7-ACRE SITE WITHIN THE BLACKWATER CREEK NATURAL AREA, ADJACENT TO THE ED PAGE ENTRANCE TO THE JAMES RIVER HERITAGE TRAIL, FOR A PERIOD OF THIRTY YEARS BEGINNING ON MARCH 26, 2003 AND ENDING ON MARCH 25, 2033.

WHEREAS, the CITY OF LYNCHBURG, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as "City" is the owner of a certain area known as the Blackwater Creek Natural Area, hereinafter referred to as the "BCNA;"

WHEREAS, the AWARENESS GARDEN FOUNDATION, INCORPORATED, a Virginia corporation, hereinafter referred to as the "AGF" was formed for the purpose of establishing, organizing and maintaining a cancer awareness garden within the City of Lynchburg; and,

WHEREAS, the City is willing to allow AGF to construct, operate and maintain a cancer awareness garden on a 0.7-acre site within the Blackwater Creek Natural Area, adjacent to the Ed Page Entrance to the James River Heritage Trail in accordance with the terms hereinafter set forth in this Agreement of Franchise, hereinafter referred to as the "Franchise." A sketch showing the approximate location of the 0.7-acre site is attached hereto as "Exhibit A."

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG AS FOLLOWS:

ARTICLE I-PURPOSE

The purpose of this Franchise is to provide for continuing care and maintenance of an approximate 0.7-acre site within the Blackwater Creek Natural Area (BCNA), adjacent to the Ed Page Entrance to the James River Heritage Trail. Volunteer members of the AGF shall construct, operate and maintain this site as a cancer awareness garden, open to the general public, with the cooperation of the City of Lynchburg. The terms and conditions contained in this Franchise will formalize the local government and non-governmental partnership, and to set forth the general terms and conditions that will guide these agencies/organizations in implementing the goals of the AGF well into the 21st century.

ARTICLE II-PREMISE/BACKGROUND

The overall concept of an Awareness Garden is uniquely compatible with the mission of the Parks & Recreation Division, as stewards and managers of municipal public park properties. In addition, the garden strengthens the interpretive and educational goals of the City. In the fall of 2001, the concept of a public/private partnership dedicated to the establishment of an Awareness Garden was proposed to City staff. An exploratory committee of public/private personnel was formed and over the course of the next year design and site selection criteria was developed. An exhaustive search of available public properties was concluded in the spring of 2002. At that

time, the Ed Page Entrance of the Blackwater Creek Natural Area (a section of the James River Heritage Trail) was selected as the location of the proposed Awareness Garden by both representatives of the City and members of Awareness Garden Foundation, Board of Directors.

ARTICLE III-BENEFITS

The objectives of the AGF are to establish, organize and maintain a garden located in the City of Lynchburg, Virginia: to use the garden and the foundation to make the public aware that cancer touches all people; to provide scholarships through future endowments for students whose lives or families have been touched by cancer; to foster cancer awareness through educational outreach in local area schools and colleges; and to provide a tangible, special place for people to reflect on the courage, dignity and hope of those who have overcome this disease and those who have fought it.

ARTICLE IV-TERM

The goals of both the AGF Board and the City shall be the establishment of an Awareness Garden within the City. Furthermore, because of substantial investment in monies, time, and other resources by the Awareness Garden Foundation, Incorporated, and the City of Lynchburg, such a garden should exist for the foreseeable future as a part of the Lynchburg Parks & Recreation system. During the term of the Franchise AGF may not assign all or a portion of the rights and privileges granted by Franchise to any other person, firm, organization or corporation without the prior written consent of the City.

The parties acknowledge that in order to design, develop and implement the Awareness Garden that is the subject of this agreement, the AGF will have to raise from private sources (individuals and grant) in excess of \$150,000.00. The parties further acknowledge that said funds will likely be spent in accomplishing AGF's goals by the anticipated date of completion of phase I (July 1, 2004). In consideration of AGF's agreement to raise and expend funds to improve the site, the City does hereby award AFG a Franchise to use the site shown on the attached plat (Exhibit A) for a period of thirty (30) years beginning on March 26, 2003 and ending on March 25, 2033, subject to the City's rights of termination. During this term the Franchise may be terminated only for good cause shown. In addition to the initial thirty- (30) year term, the City and AGF may, at their option, agree to extend the Franchise for two additional terms of five (5) years each.

At the end of the Franchise period, unless a new Franchise has been negotiated, this Franchise agreement shall continue as a month-to-month tenancy, subject to all terms and conditions contained in this Franchise agreement. Such month-to-month tenancy shall continue until such time as the City gives the Grantee thirty (30) days written notice of the termination of the month-to-month tenancy.

ARTICLE V-AFG'S RESPONSIBILITIES

The AFG Board shall be responsible for fulfilling the goals and specific objectives of the Awareness Garden as well as the day-to-day operational needs of the facility. The AGF, at its sole cost and expense, will be responsible for constructing the Awareness Garden to the City's satisfaction, will be responsible for maintaining the Garden throughout the term of the Franchise and if the AGF fails to provide proper maintenance the City has the right to do so and bill the Foundation for the costs. The AGF Board will work collaboratively with the City of Lynchburg to identify funding sources (capital and operating), develop public/private partnership

opportunities, and identify promising opportunities for specific park-based projects. The AGF Board shall provide leadership in identifying creative public/private financing opportunities for implementing educational and renewable energy projects. The AGF Board shall provide analyses of garden improvements throughout the site, an inventory of ongoing and potential sustainable projects (including those planned and implemented by Awareness Garden Foundation and the City), and recommendations on specific projects designed to have maximum exposure to the public. Finally, AGF will also provide volunteer staffing, interpretive education, and special event/site use oversight.

ARTICLE VI-CITY'S RESPONSIBILITIES

The City, through the Department of Parks & Recreation, shall be responsible for overall natural resource management of the Awareness Garden site as a part of the municipal park system. Furthermore, the City shall be committed in spirit to the long-term commitment of an Awareness Garden at said location. The City's Parks & Recreation Department will work collaboratively with AFG to identify funding sources, develop public/private partnership opportunities, and identify promising opportunities for specific park-based projects. The Lynchburg Parks & Recreation Department (LPRD) will provide technical and resource support to the Awareness Garden to develop appropriate plantings/landscaping and overall site design criteria that meets or exceeds current generally accepted parks & recreation best management practices. The LPRD will provide an assessment of the technical and economic feasibility of proposed projects and leadership in ensuring landscape plantings and educational initiatives are linked to ongoing maintenance, cyclic and future construction projects. The LPRD will provide leadership in ensuring education is integrated into project design and making the visiting public aware of the importance and value of preventative cancer practices and early detection. They will coordinate and implement a comprehensive site management plan for the sustained and long-term preservation of the site as an Awareness Garden. The City shall assume payment of all utility bills. Further the City shall provide the garden site with a water supply at City cost from which AGF may install an irrigation system at AGF's cost. The City shall have no responsibility for the removal of snow and ice from the Awareness Garden.

ARTILCE VII-COMPLIANCE WITH FEDERAL AND STATE RULES AND REGULATIONS

The grant of this Franchise is subject to all ordinances, resolutions and procedures of the City as the same now exist or may be hereinafter be adopted, amended, revised, or codified, in lawful exercise of any power granted to the City by the General Assembly or any other lawful body. AGF and the City, in performing their responsibilities under this Franchise will comply with all applicable state and federal laws and regulations.

ARTICLE VIII-COMPLETETION OF PROJECT

A deadline of July 1, 2004 has been set for final construction of the Awareness Garden (Phase I Development)

ARTICLE IX-AMENDMENTS TO FRANCHISE

The Awareness Garden Foundation, Incorporated and the City of Lynchburg may agree in writing to modify the Franchise at any time. The Franchise shall be reviewed every twenty-four (24) months during a formal meeting between the AGF Board and representatives of the City of Lynchburg. Any significant changes in the Franchise must be approved by City Council.

ARTICLE X-TERMINATION OF THE FRANCHISE

The City retains the right to withhold or withdraw any and all privileges granted under this Franchise and to terminate this Franchise at any time if AGF fails to substantially comply with any of the terms of the Franchise. Exercise of this right by the City shall be in addition to and not in place of any other rights, which the City has under the terms of this Franchise. Prior to exercising this right, the City Manager, or such other person or persons as the City Manager may from time to time designate, shall provide AGF with written notification of AGF's failure to comply with the terms of the Franchise. AGF shall have sixty (60) days from the date of such notice to remedy any such default. AGF may make a written request for a reasonable extension of the period in which it may remedy any such default to the Director of Parks and Recreation, or such other person or persons as the City Manager may from time to time designate. Any such request by AGF shall be in writing and must be made at least fifteen (15) days prior to the expiration of the initial sixty- (60) day period. Any subsequent request shall be in writing and must be made at least fifteen (15) days prior to the expiration of any subsequent period.

If there are instituted by or against AGF proceedings in bankruptcy or insolvency during the term of this Franchise, the City may terminate the Franchise at any time thereafter. The exercise of this right by the City shall be in addition to and not in place of any other rights, which the City has under the terms of this Franchise. Any successors, or assignee or assignees, or trustee, or receiver of AGF resulting from proceedings in bankruptcy or under any insolvency law shall be subject to and bound by all of the provisions, terms, conditions, and limitations of this Franchise. The City may terminate the Franchise as to any such successor or successors, or assignee or assignees, or trustee, or receiver of the AGF at any time.

The City retains the right to withhold or withdraw any And all privileges under this Franchise and to terminate this Franchise at any time if there is a taking of the AGF's assets by a court of competent jurisdiction. Exercise of this right by the City shall be in addition to and not in place of any other rights, which the City has under the terms of this Franchise.

ARTICLE XI-INDEMNIFICATION

The Awareness Garden Foundation shall indemnify, hold harmless and assume the defense of the City, its agents, employees, and officials, from any and all liability, expenses, or claims which may be recovered from, or sought to be recovered from the City its employees, officials, and agents by reason of or on account of any property damage, injury or death of any person arising from the construction, maintenance and operation of the awareness garden. In discharge of this obligation, AGF agrees, at its expense, to obtain and keep in full force and effect at all times during the term of this franchise, comprehensive public liability insurance in at least the amount of \$1,000,000, combined single limited coverage against general public liability for injuries to or death of persons or damage to property. Such insurance policies shall also name the City, its employees, officials and agents as insured parties. AGF shall furnish the City's Risk Management Division with a copy of said insurance policy or certificate showing the insurance coverage to be in full force and effect before beginning any work on the awareness garden. Such insurance policy or certificate shall contain provisions providing that the City shall be given 30 days prior written notice of any cancellation or reduction in the required coverage. The insurance required hereunder shall be primary and any insurance or self-insurance maintained by the City shall be in excess of and shall not contribute with the insurance provided by the AGF

under this Franchise. Any deductibles or self-insurance retentions applicable to the required coverage shall be paid by AGF and the City shall not be required to participate therewith. All rights of subrogation against the City shall be waived. Each year this Franchise remains in effect AGF shall provide the City's Risk Management Division with a copy of a current insurance policy or a certificate of insurance showing the insurance coverage is still in full force and effect. Maintenance of the coverage required hereby shall fully satisfy AGF's obligation to indemnify the City of Lynchburg, and its employees, officials and agents and the City expressly agrees that so long as this coverage is kept in force, the Foundation shall have no obligation to indemnify the City outside the coverage provided by the policy.

ARTICLE XII-METHOD OF ACCEPTANCE

Any person, firm, corporation, or other entity bidding for this Franchise shall deposit with the bid its check in the sum of \$100.00, payable to the City as the security to the City that the Grantee shall accept the Franchise within thirty (30) after the adoption of the ordinance granting the same. Upon the failure of the Grantee to accept this Franchise pursuant to the provisions of this section, such Grantee shall forfeit this deposit to the City. The checks of all other bidders shall be returned upon the acceptance of the Franchise by the selected Grantee. The check will be returned to the successful bidder upon the execution of the Franchise.

This Franchise shall be and become effective and shall constitute a contract of Franchise between the City and Grantee when the Grantee shall cause a copy thereof to be signed by a proper official of the Grantee duly authorized thereto and under its corporate seal, duly attested to by an authorized official of the Grantee, accepting the terms and provisions of this Franchise on behalf of said Grantee.

Adopted:

Certified: _____
Clerk of Council

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FORM OF ACCEPTANCE

The foregoing Franchise, as set forth in the ordinance adopted by the Council of the City of Lynchburg, Virginia on _____, 2003, is hereby Accepted by the Awareness Garden Foundation, Incorporated, according to the terms thereof for a period beginning March 26, 2003 and continuing through March 25, 2033.

This acceptance is executed on behalf of the Awareness Garden Foundation, Incorporated by _____ and _____, its President and Secretary, respectively, this _____ day of _____, and 2003, by virtue of authority duly and properly vested in them as officers of said corporation.

AWARENESS GARDEN FOUNDATION, INC.

By: _____

President

Attest:

Secretary